INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Date of judgment and application for appeal	1
Michigan Statute valdity of which is involved	2
Nature of the case and rulings of the Court	7
Substantial question involved	11
Cases sustaining jurisdiction	12
Alternate certiorari application	13
Appendix—Opinion of the United States Court of Appeals for the Sixth Circuit	14

Table of Cases Cited

Anderson National Bank v. *Luckett*, 321 U. S. 233	11
Bradford Electric Light Co. v. *Clapper*, 284 U. S. 221	13
City of Richmond v. *Deans*, 281 U. S. 704	12
Keating v. *Public National Bank*, 284 U. S. 587	12
McCarrol, Commisssioner of Revenues of Arkansas v. *Dixie Greyhound Lines, Inc.*, 309 U. S. 176	12
New State Ice Company v. *Liebman*, 285 U. S. 262	12
People of the State of New York v. *Latrobe*, 279 U. S. 421	12
Republic Pictures Corp. v. *Koppler*, 327 U. S. 757	12
Rushton v. *Schram*, 143 F. (2d) 554	10
Starr v. *O'Connor*, 118 F. (2d) 548, 314 U. S. 695	10
Starr v. *Schram*, 143 F. (2d) 561	10
United States v. *Klein*, 303 U. S. 276	11

Statutes Cited

Act 238 of the Public Acts of Michigan for the year 1897 and amendments thereof, being Sections 13, 455 to 13, 477 of the Compiled Laws of Michigan for 1929 (Vol. 3, p. 4814 and Mason's Supplement of 1940 (p. 1431), as amended by Act 170 of the

Page

Public Acts of Michigan for 1941 (p. 245), Sections 4b, 5, 6, 6a, 7, 9, 9a, 9b, 10, 10a, 10b, 13, 13a, 15, 21, 22 and 23 . . . 2

Judicial Code Section 240 (28 U.S.C. 340) as revised by the Act of June 25, 1948 (28 U.S.C. 1254(2)) . . . 12, 13

Judicial Code, Section 274(d) (28 U.S.C. 2201 and 2202) . . . 7, 8

Michigan Constitution of 1908, Article VI, Section 20 . . . 2

National Bank Law, Section Section 194 (12 U. S. C. 194; R. S. 5236) . . . 9

United States Code, Title 28, Sec. 1254(2) as revised by the Act of June 25, 1948 . . . 1

UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT

No. 10,615

STEPHEN J. ROTH, ATTORNEY GENERAL, SUCCESSOR TO EUGENE F. BLACK, ATTORNEY GENERAL, IN THE NAME AND ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Appellant,

vs.

PRESTON DELANO, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES OF AMERICA, AND JOSEPH T. CONNOLLY, AS RECEIVER OF THE FIRST NATIONAL BANK-DETROIT, A NATIONAL BANKING ASSOCIATION, AND AS DETROIT REPRESENTATIVE, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES OF AMERICA,

Appellee.

JURISDICTIONAL STATEMENT

Statutory Provisions Sustaining Jurisdiction

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Title 28, U. S. Code, Sec. 1254(2), as revised by the Act of June 25, 1948.

Date of Judgment and Application for Appeal

The final judgment and decree of the Court of Appeals for the Sixth Circuit was entered November 30, 1948, *sub nom. Eugene F. Black, Attorney General,* v. *Preston Delano, Comptroller of the Currency of the United States of America, et al.*

Application for appeal is herewith presented on the 25th day of January, 1949.

Michigan Statute Validity of Which Is Involved

The statute of the State of Michigan the validity of which is involved is the Michigan law relating to escheatable and abandoned property, being Act 238 of the Public Acts of Michigan for the year 1897 and amendments thereof, being Sections 13,455 to 13,477, both inclusive, of the Compiled Laws of Michigan for 1929 (Vol. 3, p. 4814), and Mason's Supplement of 1940 (p. 1431), as amended by Act 170 of the Public Acts of Michigan for 1941 (p. 245).

The Michigan Constitution of 1908, Article VI, Section 20, creates a State Board of Escheats, composed of the Secretary of State, the State Treasurer and the Commissioner of the State Land Office (Vol. 1, Comp. Laws of Mich. 1929, p. 216).

Inasmuch as the opinion in the Circuit Court of Appeals held the Michigan law invalid on the broad ground that a State escheat law interferes with the liquidation of a national bank under the federal statute rather than because of any particular provisions of the Michigan statute, we summarize the Michigan law as follows:

Sec. 5 and other sections placed the duty upon the Attorney General of Michigan to protect the interests of the State in any unclaimed, uncalled-for or abandoned money, securities, credits or property.

Sec. 4b contains definitions, under which a "depository" is defined to include any person who or which has in his or its possession or under his or its control any property, including liquidated choses in action, for which he or it is indebted or accountable to any other person as depositor. The same section defines "person" to include, among others,

an association, a bank, any governmental department, agency or official, a receiver, a fiduciary, a custodian, and a liquidating officer.

Sec. 6 requires reports to the State Board of Escheats on June 30th each year from each depository, giving the dates, amounts and interest thereon, of deposits and the names of depositors, "where no dealings or transactions have been had between the depositor and the depository with respect to any money, credits, securities or property of any kind for a period of seven years or more."

Sec. 6a directs the State Board of Escheats, or the Attorney General, to demand reports, upon receiving information or having good reason to believe that any money, credits, securities or property of any kind have been unclaimed, uncalled-for or abandoned, where no dealings or transactions have been had between the depositor and the depository with respect to such property for a period of seven years or more. By the same section, the Board and the Attorney General are given the same powers with respect to examination of the books and records of the depositories making such reports as are provided by the banking laws of the State with respect to examination of banks.

Sec. 7 provides that any depository who, after being required to make report by the Board or Attorney General. shall fail to file the same, shall be liable to the State in the penal sum of $300.00 for each such failure and the additional sum of $10.00 for every day while the report remains unfiled.

Sec. 9 places the duty on the Attorney General to file a bill in chancery, in behalf of the People of the State of Michigan, in any court having jurisdiction or other proper proceeding to compel a full, complete and truthful statement of the matter required to be contained in the report.

Sec. 9a subjects to escheat, in the case of a depository operating within the State whose business is being liquidated, any money or credits belonging to a depositor for which no claim has been filed or for which no demand has been made, where no dealings were had with the depository or with the receiver, custodian or liquidating agent for a period of seven years; and authorizes the Attorney General to intervene in behalf of the People of the State or to institute suit to have such property decreed to be escheated to the State. The Attorney General is also authorized to file claims with the receiver, custodian or liquidating agent, dividends thereon to be paid to the State Board.

Sec. 9b provides that, where money, credits, etc., have been unclaimed or uncalled-for or abandoned for a period of seven years or more by the depositor, the Attorney General, in the name of the People of the State, may institute suit in the Circuit Court, in Chancery, to escheat the same, in which suit the depository and the depositors shall be made parties defendant. The section requires that personal service shall be made upon the depositories and upon the depositors, if they be found, and, if not, that they be served by publication for six successive weeks in a newspaper printed and published in the county. The court at the hearing is directed, upon a finding that the property has been abandoned, to decree the property escheated or transferred to the State and to direct that the same be paid to the State Board of Escheats.

Sec. 10 provides an alternative method in the case of a depositor whose identity is unknown or where the depositor has had no dealings or transactions in regard to the property within seven years, and where there is good reason to believe that the depositor is dead. In such case the Attorney General, or the State Public Administrator, is given the duty to take proceedings to have an administrator appointed

in the proper Probate Court to administer upon the estate of such missing depositor as a deceased person.

The administrator, upon giving bond, is given the right and duty to demand and receive from the depository deposits of the missing depositor, the administrator being also given rights of action to reduce the same to possession and control as administrator. The section further provides that, if there are no known heirs, legatees, devisees or assigns of the missing depositor, then, upon the allowance of the administrator's final report and accounting, the administrator shall assign the property or funds to the State Board of Escheats.

Sec. 10a provides that, in case there are no known heirs, legatees, devisees or assigns of a depositor, it shall be sufficient proof for the purposes of escheat when it appears from reliable sources and the books and records of the depository that the disappeared or missing depositor has had no dealings or transactions with the depository for a continuous period of seven years, but it is provided that, within thirty days after the granting of administration, notice of the granting of administration shall be published in the form of similar notices in the administration of the estates of deceased persons, and that notice of the hearing on the final account of the administrator shall be published for three weeks prior to the date of the final hearing.

Sec. 10b permits the combination in one administration proceeding of more than one estate, provided that the aggregate value of the known assets of the combined estates does not exceed $1,000.00.

Sec. 13 creates a presumption of death where any person disappears and his whereabouts remains unknown for the space of seven years and no knowledge of such person can be procured for such period, and provides that, if no person or persons are found who would be his heir or heirs

at law, then administration upon his estate shall be taken in accordance with the provisions of the law.

Sec. 13a creates a presumption of abandonment and escheat to the State where the depositor has had no dealings with a depository doing business, located or operating within the State for a period of seven years or more, and provides that no statute of limitations shall be a defense to escheat proceedings.

Sec. 15 provides that, upon the completion of the administration of an estate, escheated property shall be turned over to the State Board of Escheats as trustees, which shall cover the property or the avails thereof into the State treasury for the use of the primary school fund.

Sec. 21 directs that the Board of Escheats shall keep records of the property coming into its care and the time and amount of money covered into the State treasury on account of each estate, the account to be kept in the office of the State Treasurer as a public record.

Sec. 22 provides that, at any time after property is assigned to the State as an escheated estate or as abandoned property, any person may file with the Board of Escheats satisfactory proof, to be determined by the Board, of the right of such person, as husband, wife, heir at law, next of kin, devisee or legatee or assign, to the estate of the disappeared, missing or deceased person, in which case the Board, upon the payment to the Board of expenses which have been incurred in relation to the estate, shall cause the property to be turned over to such person. This section contains a similar provision giving the right to the assignee of any depositor other than a depositor who was a natural person, at any time upon satisfactory proof, to obtain the property. A like right is given to the depositor presumed to be deceased or to have abandoned his property and whose estate has been administered or whose property has been decreed to have been abandoned, at any time upon

satisfactory proof of his identity and right to the property, to receive the property. The section further provides that payment shall be made out of any money in the State treasury which has been derived from escheated estates or abandoned property, and the persons entitled to the deposit are expressly given the right to review by the Michigan Supreme Court, by certiorari, of any final decision of the State Board.

No time limit whatever is imposed upon the right of the person entitled to the property to claim the same.

Sec. 23 provides indemnity to the depository who has paid money or property to an administrator or the State Board of Escheats who is thereafter required to carry out and perform the contract of deposit with the depositor or the heirs, holders for value or assigns of the depositor or the person in whose name the property was held; the State being required to pay to the depository the amount of damage or loss it may have sustained, the amount to be paid out of any money in the State treasury which has been derived from escheated estates or abandoned property. The depository is given the right to review any final decision of the State Board of Escheats by the Michigan Supreme Court, by certiorari.

While there are other provisions of the statute relating to escheat of real property, the sale thereof and other details, the foregoing is a summary of the provisions believed pertinent to the issues in this suit.

Nature of the Case and Rulings of the Court

The case arose on petition of the Attorney General of Michigan filed in the United States District Court for the Eastern District of Michigan, Southern Division, June 25, 1946, for declaratory judgment and other relief pursuant to Sec. 274-d of the then Judicial Code, now in substance

Title 28, U. S. Code, Sections 2201 and 2202, as revised. The petition prayed that the Court declare that the Michigan law above mentioned is applicable to deposits in First National Bank-Detroit, a national banking association with its office in Detroit in said District, which bank had been declared insolvent in 1933 and liquidated. The petition also prayed that it be declared that the defendants are bound by said Michigan law and that they be enjoined from removing certain records from the State of Michigan. The defendants were Preston Delano, Comptroller of the Currency, and Joseph T. Connolly, a resident of Detroit, Receiver of the bank and Detroit Representative of the Comptroller. Delano obtained his dismissal from the case because he was a non-resident of the District. As no appeal was made on this point, Delano is out of the case.

Defendant Connolly appeared generally and moved to dismiss for the alleged reason that the petition failed to state a cause of action, Connolly also claiming that the Court lacked jurisdiction over the subject matter and that the suit would not lie against him as Receiver or as Representative of the Comptroller. The State of Michigan, through its Attorney General, claimed applicability of its law to deposits in the bank where the depositors had proved claims but thereafter had not been located to receive liquidation dividend checks or, if they had received such checks, had failed to cash the same.

The bank liquidation resulted in dividends to depositors aggregating 107.565% of the principal of the deposits, most of the distributions having been authorized more than seven years before the institution of the suit. The bank was a very large one, having proven deposits and claims of $333,173,379.40, a total of 544,630 claims having been proven. The number of claimants was reduced to 160,271 by the acquisition of a large group of small claims by a small group of large depositors.

The amount of dividend checks which for more than seven years the Receiver has been unable to deliver to claimants or which, if delivered, have not been cashed for seven years, is not known to appellant, as the Receiver has failed and refused to file reports with the State Board of Escheats as required by the Michigan law, but from oral statements of defendant's counsel it is believed to be in the neighborhood of $300,000.00.

In the absence of report giving the amounts of deposits and depositors' names where proven claims have been abandoned for more than seven years, the State is unable to proceed with administration of the estates of the disappeared persons or, in the alternative, to proceed by suit for collection as authorized by the statute.

The District Judge granted defendant Connolly's motion and dismissed plaintiff's petition without opinion.

The Circuit Court of Appeals affirmed the order of the District Court in an opinion, copy of which is appended. The decision was expressly based solely on the merits, the Court holding that application of the Michigan law would constitute an unlawful interference with the liquidation of a national bank, thus in substance determining that the Michigan statute is invalid as repugnant to the National Bank Law and in particular to Sec. 194 (Title 12, U. S. Code, Sec. 194; R. S. 5236):

> "From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated: and the remainder

of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."

This point was urged by defendant Connolly in the District Court and Circuit Court of Appeals as ground for the dismissal of the petition in the District Court and the affirmance of such dismissal, in that the petition failed to state a cause of action if the Michigan law was invalid as repugnant to the federal statute.

There were other federal questions involved in the suit, such as the jurisdiction of the District Court over the subject matter and the right to bring suit against the Receiver. These issues were assumed by the Circuit Court of Appeals, but not decided, in favor of the plaintiff, and it is unnecessary to state them as a basis for the jurisdiction of the Supreme Court of the United States. The Court in its opinion referred to three earlier cases in the same Court, viz.:

Starr v. *O'Connor*, 118 F. 2, 548 (decided Mar. 14, 1941), certiorari denied 314 U. S. 695;

Rushton v. *Schram*, 143 F. 2, 554 (decided May 31, 1944);

Starr v. *Schram*, 143 F. 2, 561 (decided May 31, 1944).

These are not earlier opinions in the same case or opinions in companion cases. They are earlier cases involving different issues.

The first of the cases above mentioned involved the law of Michigan prior to its amendment in 1941, which the present case concerns.

The second two cases above cited relate to the Michigan statute now involved.

However, all three cases related to attempts of the then Attorney General of Michigan to apply escheat law to dor-

mant deposits in the First National Bank-Detroit in liquidation, *where the depositor had failed to present claim* and hence may not have been entitled to payment under Sec. 194 of the National Bank Law above quoted, requiring payment of liquidation dividends on such claims as may have been proved to the Comptroller's satisfaction or adjudicated in a court of competent jurisdiction, moneys otherwise payable on unproven claims perhaps being given to the augmentation of payments on proven claims by tontine right.

The present case relates solely to whether the Michigan escheat law, in its application to proven claims where the claimant after proving his claim has disappeared, is repugnant to this or other sections of the National Bank Law requiring ratable payment on proven claims with respect to which federal law does not purport to award money payable on such claims either to other claimants, the shareholders of the bank, or the United States.

The Circuit Court of Appeals recognized the difference between this suit and the former cases, but held that the difference afforded no logical basis for a declination to apply settled doctrine.

Substantial Question Involved

The amount involved in the suit is large. The case was decided on the merits. The Supreme Court of the United States has not heretofore decided the exact question, although it has decided that similar State escheat laws are not repugnant to the National Bank Law when applied to an operating national bank. *Anderson National Bank* v. *Luckett*, 321 U. S. 233.

The Supreme Court of the United States has likewise held an escheat law applicable to funds which under federal statute have been covered into the Treasury. *United States* v. *Klein*, 303 U. S. 276. The present case is the only

one which has applied contrary doctrine to proven deposits in a national bank in liquidation.

Solution of the problem of supposed clash between the National Bank Law and proper State escheat laws is a substantial one and important not only to the State of Michigan but to other States. Banks, whether State or national, are the largest source of escheatable funds. The United States has not passed any federal escheat law, the same being a subject reserved to the States. Large sums in the case of First National Bank-Detroit and many other national banks in liquidation now are and for many years have been in the Treasury of the United States awaiting payment on proven claims where the claimant has disappeared or died without known heirs, which sums, unless the National Bank Law conflicts, should be taken by the States where the banks were located for payment to the claimants, or the successors of the claimants, if they can be located by proper State judicial proceedings and publication of notice.

Cases Sustaining Jurisdiction

Cases believed to sustain the jurisdiction of the Supreme Court of the United States in appeals from a Circuit Court of Appeals where that Court has held a State statute to be invalid as repugnant to the Constitution, treaties or laws of the United States are *McCarrol, Commissioner of Revenues of Arkansas*, v. *Dixie Greyhound Lines, Inc.*, 309 U. S. 176; *New State Ice Company* v. *Liebman*, 285 U. S. 262; *People of the State of New York* v. *Latrobe*, 279 U. S. 421; *Republic Pictures Corp.* v. *Koppler*, 327 U. S. 757; *Keating* v. *Public National Bank*, 284 U. S. 587; *City of Richmond* v. *Deans*, 281 U. S. 704.

While the above cases were decided under Sec. 240 of the Judicial Code (Title 28, U. S. Code, Sec. 347) before its recent revision, the present section, as revised by the Act

of June 25, 1948 [Title 28, U. S. Code, Sec. 1254(2)], is substantially identical. See reviser's notes to revised Sec. 1254.

Alternate Certiorari Application

Appellant is also applying for certiorari with respect to the same judgment. He believes that the Supreme Court of the United States has jurisdiction over this appeal. If, however, in this he is mistaken, it is requested that writ of certiorari be granted. *Bradford Electric Light Co.* v. *Clapper*, 284 U. S. 221.

Respectfully submitted,

STEPHEN J. ROTH,
Attorney General;
EDMUND E. SHEPHERD,
Solicitor General;
ARCHIE C. FRASER,
Assistant Attorney General,
State Capitol,
Lansing 2, Michigan;
JULIUS H. AMBERG,
Special Assistant Attorney General,
500 Michigan Trust Building,
Grand Rapids 2, Michigan,
Attorneys for Appellant.

APPENDIX

Opinion Sought to Be Reviewed

No. 10615

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

EUGENE F. BLACK, Attorney General, Successor to John R. Dethmers, Attorney General, in the Name and on Behalf of the People of the State of Michigan, *Appellant*,

v.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and JOSEPH T. CONNOLLY, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, *Appellees*

Appeal from the United States District Court for the Eastern District of Michigan

Decided November 30, 1948

Before Hicks, Chief Judge, Martin and McAllister, Circuit Judges

MARTIN, *Circuit Judge:*

Our appellate jurisdiction has been repeatedly invoked in litigation involving, in varying phases, the right of the State of Michigan to apply its statutes of escheat to deposits in the First National Bank-Detroit, a national bank in liquidation.

In *Starr, Attorney General v. O'Connor, Comptroller of the Currency*, 6 Cir., 118 F. (2d) 548 (decided March 14, 1941) certiorari denied 314 U. S. 695, we reviewed at length the state's escheat laws, construed relevant provisions thereof, and attempted to demonstrate from highest author-

ity that, while national banks are subject to state laws which do not interfere with the purposes of their creation, or tend to impair or destroy their efficiency as federal agencies, or conflict with the paramount law of the United States, the then existing Michigan escheat procedure constituted an unlawful interference with the liquidation of a national bank. We pointed to the decisions of the Supreme Court in *Cook County National Bank v. United States*, 107 U. S. 445, 448; *Davis v. Elmira Savings Bank*, 161 U. S. 445, and *First National Bank of San Jose v. State of California*, 262 U. S. 366.

After our opinion was promulgated, the legislature of Michigan amended the state laws of escheat by Act No. 170, Public Acts of 1941. In *Rushton, Att'y Gen. v. Schram*, 6 Cir., 143 F. (2d) 554 (decided May 31, 1944), we held that the amendatory act did not apply *retroactively* to dormant deposits in the insolvent First National Bank-Detroit. The majority opinion in that case assumed upon principles of comity that the state legislature had not intended to enact a law, effective retroactively, which would interfere with the complete system provided by Congress for winding up national banks and distributing their effects in a manner neither limited nor enlarged by other statutory provisions with respect to the settlement of demands against insolvents or their estates.

We expressed the further presumption that the Michigan legislature had not designed to nullify the decision of this court in the *Starr* case, but had enacted a law intended to operate *prospectively* only. *Anderson National Bank v. Luckett*, 321 U. S. 233 (which was announced after the filing date of this court's opinion in *Starr, Att'y Gen. v. O'Connor, Comptroller of the Currency, supra*), was distinguished upon the ground that, there, the Supreme Court's adjudication related to the applicability of a state's laws of escheat to deposits in a *solvent and operating* national bank. One of our judges, however, based concurrence in the result reached upon the proposition that the Michigan amendatory act operated in the context as an unlawful interference with the liquidation of a national bank as provided for in Title 12, section 194, of the United States Code. The majority

opinion did not gainsay this, but attributed to the Michigan legislature no intended interference with the liquidation of the First National Bank-Detroit.

In *Starr, Att'y Gen. v. Schram*, 6 Cir., 143 F. (2d) 561 (decided on the same day, May 31, 1944), this court, in unanimity, affirmed the decree of the district court to the effect that the escheat statutes of Michigan, *including Act 170 of the Public Acts of Michigan for 1941*, constitute an unlawful interference with the liquidation of an insolvent national bank and are inapplicable to the receivership of the First National Bank-Detroit. The decree below was reversed in part, but not in respect to the clear-cut holding just stated.

The same statute, Act 170, is involved in the present litigation, which on its merits relates only to the attempt of the State of Michigan to apply its escheat laws to deposits where depositors have had their claims allowed by the receiver, the Comptroller of the Currency, or both, and have, since that time, either died, disappeared, failed to receive or to cash dividend checks issued to them.

Both defendants in the district court, Delano, Comptroller, and Connolly, Receiver, moved to dismiss the instant action. The Comptroller of the Currency, in his special appearance, combined his motion to dismiss with a motion to quash the service upon the ground that he could not, without his consent, be properly sued outside the District of Columbia. The motion of the receiver also challenged the jurisdiction of the district court for the eastern district of Michigan, and additionally pleaded no cause of action.

The district court granted both motions, as made. Assuming without deciding that the action was brought in the right district, we are of opinion that the judgment of dismissal should be affirmed on the merits. The present action brought by the State of Michigan to apply its laws of escheat in the circumstances related constitutes an unlawful interference with the liquidation of a national bank upon the same principles and authority fully discussed in our previous opinions. The valiant spirit displayed in continuing litigation by successive attorneys general of Michigan and able special counsel retained to aid them is commendable,

but we think their present battle is fought upon essentially the same legal grounds upon which former contests have been waged. The authorities which they now submit have been previously carefully considered and rejected as failing to sustain their major objective.

The fact that we encounter here proven claims rather than dormant deposits supplies no logical basis for a declination to apply settled doctrine. The order of dismissal is affirmed.

(1229)